

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

JM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANA JARVIS, *et al.*,

Defendant.

05 OCT 20 PM 2: 07

CLERK ALBUQUERQUE

CR 05-1849 JH

REPLY TO UNITED STATES' RESPONSE TO MOTION FOR RELEASE

COMES NOW Defendant Dana Jarvis, by and through his counsel of record and files this Reply to the government's response to his motion requesting release from custody on conditions pending the trial of this matter. In support, he states the following:

1. The United States argues that Mr. Jarvis' motion for release must be heard by the District Court as "a motion to revoke" the Order of Detention of August 29, 2005, on the ground that the information provided in the motion "was [] known to the movant at the time of the hearing". However, the most important information presented in the motion is the availability of a third party custodian. While Mr. Jarvis clearly knew Abbot Marr at the time of the original detention hearing, the proffered third party custodian was out of town and it was unknown whether or not he was ready, willing and able to perform the duties of a third party custodian. In addition, undersigned counsel had less than an hour prior to the hearing on August 29 to meet with the defendant. During that period, the Indictment, maximum penalties, the nature of an arraignment, detention issues and personal information had to be obtained and discussed. It was impossible for counsel to learn and understand all the facts and circumstances of the offenses charged and the

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defendant's background in the brief period available. As counsel was appointed in the late afternoon of the day prior to the hearing, none of the information provided to the Court in the motion for release could be obtained prior to the morning of the hearing. Neither counsel nor the defendant was privy to the information contained in the Pre-trial Services report, as that report is not available outside the actual courtroom. Indeed, it is counsel's recollection that Magistrate Judge Torgerson indicated at the end of the detention hearing that he would consider third party release should counsel locate an appropriate third party custodian. In any event, if the defendant believed he was not providing new information which impacts on the issues of whether there are conditions of release which will reasonably assure the defendant's appearance and the safety of the community, he would have filed an appeal of the detention Order.

2. In its responsive pleading, the government does not provide any specific facts contesting the proffers made in the defendant's motion; rather it merely repeats and relies on the allegations contained in the Indictment, all as yet unproven. In fact, the government has not yet provided full discovery, including copies of documents seized from the defendant at the time of his arrest almost two months ago.

3. In further support of Mr. Jarvis' request for release, attached hereto are a number of letters from relatives, friends and prior counsel which speak to and corroborate the defendant's background and reliability regarding appearance and his lack of any hint of any history of violent conduct. It is anticipated that additional letters will be available to the Court at the time of the hearing of this motion.

WHEREFORE, Defendant Dana Jarvis respectfully requests the Court schedule a hearing before Magistrate Judge Torgerson, and set appropriate conditions of release.

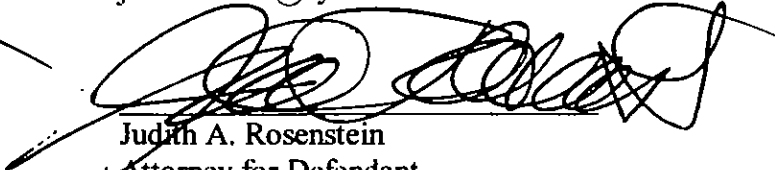
Respectfully submitted,

I hereby certify that a true copy of this pleading was faxed to AUSA J. Braun and US Pre-trial Services on this 20th day of October, 2005.

JUDITH A. ROSENSTEIN
P.O. Box 25622
Albuquerque, NM 87125-5622
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(505) 797-8086 (facsimile)
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Judith A. Rosenstein



Judith A. Rosenstein
Attorney for Defendant

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20 FIRST PLAZA, SUITE 700
ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE (505) 842-9980
FACSIMILE (505) 842-0751
CELL (505) 382-6514

Charles W. Daniels

MAILING ADDRESS
P.O. BOX 25326
ALBUQUERQUE NM 87125-0326

October 18, 2005

Honorable Alan C. Torgerson
United States Magistrate Judge
United States District Court
333 Lomas Blvd. NW # 670
Albuquerque, New Mexico 87102-2205

Re: Dana Jarvis Conditions of Release

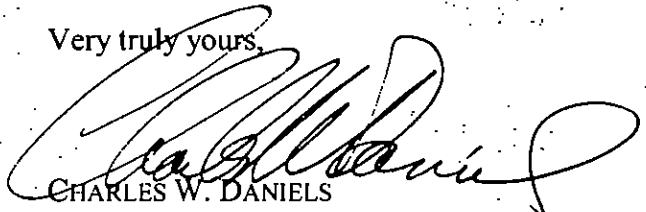
Dear Judge Torgerson:

I have been asked to write to you to share with you my experience as counsel for Dana Jarvis in a case some twenty or so years ago, in which Nancy Hollander and I represented Dana in a case in the federal court in Columbia, South Carolina.

I remember the case well. Mr. Jarvis was released pending trial by the federal court on various conditions of release. Mr. Jarvis honored those conditions throughout the pendency of the case and voluntarily appeared at all proceedings, including traveling from New Mexico to South Carolina for the jury trial on the merits. The case was dismissed after a day of voir dire and a further day of hearings on what turned out to be dispositive prosecutor misconduct issues.

Throughout the representation, Mr. Jarvis was responsive to counsel and communicated regularly with us and was obedient to the orders of the court.

Very truly yours,



CHARLES W. DANIELS

JAMES P. BIEG
P.O. Box 9132
Santa Fe, New Mexico 87504
820-9342

October 5, 2005

Honorable Alan C. Torgerson
United States Magistrate Judge
United States District Court
333 Lomas Blvd. NW # 670
Albuquerque, New Mexico 87102-2205

Re: United States v. Dana Jarvis

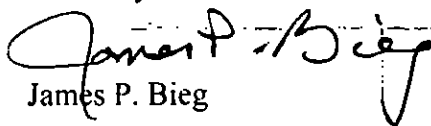
Dear Judge Torgerson:

I write to urge you to grant Dana Jarvis's request for release from custody pending resolution of the criminal charges that have been brought against him.

I am a lawyer at the Rodey Law Firm and have known Dana since our undergraduate days at the University of Arizona. Dana comes from a well-respected Arizona family with a history that goes back to before the Civil War. He has resided in New Mexico since the late 1970s, and has many ties to the local community through family and friends. He is a devoted family man, with a son, Dylan, in high school, and a young daughter, Emma, who recently turned one year old. Dana has expressed to me his desire to continue to support his children upon his release. I sincerely believe that Dana does not pose a flight risk. I also have known Dana as a peaceful, non-violent, person, and he would not be any kind of a danger to the community.

Thank you for considering this request.

Sincerely,


James P. Bieg

Judith A. Rosenstein

From: Lee Parsons [parsons@oneimage.com]
Sent: Thursday, October 06, 2005 6:32 PM
To: jrosenstein7@cybermesa.com
Subject: RE: Character Letter

Character Letter for Dana E. Jarvis
October 6 , 2005
From Mrs.. Lee J. Parsons

Dear Sir,

Dana Jarvis is my younger brother. I am 62 years of age, and am a retired R.N. As a family member I am worried about his incarceration. My statement describes some strong reasons why Dana is not a flight risk or a danger to society.

Dana is devoted to his three children and would never leave them. They mean the world to him.

Dana is a permanent resident of New Mexico. He has lived there for many years. He owns property, is a business man, and pays taxes. His skills include successful business management of his night club.

Dana has never been a violent person, he is gentle and kind. Dana has been very supportive to our mother who has been a widow for 18 years.

Dana is a very smart and responsible person and I believe he can be trusted to face the charges brought against him.

Feel free to call me if I can be of further help to Dana.

Sincerely,
Lee Parsons
1631 Lakeshore Drive
Ft. Collins, CO 80525
970-223-7431

10/7/2005

Anthony M. Ash
6573 N. 78th Place
Scottsdale, Az. 85250
480.220.0361 Phone
480.634.8676 Fax
Tash1@cox.net

To Honorable Judge Torgerson:

My name is Anthony M. Ash. I live in Scottsdale Arizona. I am married and work as a construction manager and have been in the business for 32 years.

I am writing this on behalf of my friend Dana Jarvis. I have known Dana for 45 years. He has had my trust throughout. I have known Dana to console those who have had tribulations and help those in need thusly earning my respect and trust. As there are many instances of his good character, I feel that he is at his best when in the company of his family who love him dearly. I implore your Honor to free him.

I thank you for taking the time to read this,

Respectfully,
Anthony Ash

10/12/05

Your Honor,

Thank you for your time for reading this letter. I am the son of Dana Jarvis, my name is Dylan Jarvis. I want to ask for your consideration in this case. I am fifteen years old and at this point in my life I need a male influence like my dad. He has always been a good father to me and he's always been there for me. I am respectfully asking you to keep in mind that I'm without a father, and in this part of my life it's very hard to accept that.

Thank you once again with great respect for giving me a chance to write to you and for listening to what I have to say.

Sincerely, *Dylan Jarvis*

LETTER FROM JUSTIN FITZGERALD, 28 QUAIL RUN, SANTA FE, NM
(Original letter in pencil and cannot be copied in readable form)

Dear Judge:

I think Dana is a very good man to me. He is like a father. I've never really had that much support from my father. But with Dana out and me with him would really be a big support for me and my mom. I know it would be better fro him too he would be able to see his son and give him a hug. I love Dana and I can't stand seeing him in there any longer. My Uncle is truly a good man so I ask of you please don't take him from me and all and all the ones that love him.

Thank you

Justin Fitzgerald

Dear Judge

I think Vasa is a very good man indeed. He is like a fervent hearted, hot blooded man, full of energy, full of life, and we with him would really be a big happy home and a second home. I would be glad for him too. He would be able to see his son and give him a kiss of love. Vasa and I could shed every sin in there any longer, and I think I would like to see him. If you please do not take him from me and all the over that. Love him.

Thank you

Justin Ferguson

OCT 20, 2005 01:01P Clark Realty

(505) 982-5264

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Joan & George Clark

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October 18, 2005

U.S. Magistrate Allan Torgenson
333 Lomas, N.W., #670
Albuquerque, NM 87102

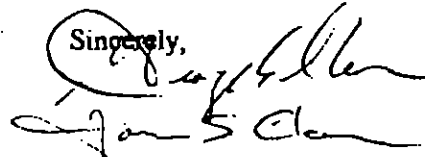
Dear Magistrate Torgenson,

We are writing this letter on behalf of Mr. Dana Jarvis. Mr. Jarvis has been a client of our real estate office located in Santa Fe and has grown to be a person we are fond of. Over the last ten years, we have seen Mr. Jarvis raise his two children in a respectful and loving manner.

In doing business with Mr. Jarvis, we have found him to be honest, diligent, and thoughtful. We sincerely hope that the current challenges he faces will not harm his relationship with his children nor his ability to be a loving father to them. With this in mind, we do not perceive him to be a flight risk should he be released from custody at this time.

Please feel free to contact us should you wish to discuss this further.

Sincerely,



George E. Clark
Joan S. Clark
Owners/Brokers, Clark Realty